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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,606	02/23/2004	Nadine Voigt	104035.274286	3180

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GREENBLUM & BERNSTEIN, P.L.C.  
1950 ROLAND CLARKE PLACE  
RESTON, VA 20191

EXAMINER
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YU, GINA C

ART UNIT	PAPER NUMBER
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1617

NOTIFICATION DATE	DELIVERY MODE
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12/21/2007

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com  
pto@gbpatent.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/785,606	<b>Applicant(s)</b> VOIGT ET AL.	
	<b>Examiner</b> Gina C. Yu	<b>Art Unit</b> 1617	

**– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –**  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 September 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 23-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Receipt is acknowledged of amendment filed on September 25, 2007. Claim rejections made in the previous Office action dated June 25, 2007 are withdrawn in view of claim cancellation by applicants. Claims 23-49 are pending, and new rejections are made as discussed below.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 23-31, 35-42, 47-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Favre et al. (US 6395262 B1) in view of Cosmetic Additives (1991).**

Favre teaches in Example 5 an oil-in-water emulsion cosmetic formulation comprising a) 0.6 % by weight of Carbopol 980 from Goodrich, which meets the polyacrylic acid thickener of instant claims 1 and 17 a); b) 0.1 % by weight of Pemulen TR2, also from Goodrich, which meets the acrylic acid/C10-30 alkyl methacrylate copolymer of instant claims 1 and 17 b); c) 8 % by weight of Apricot oil; and 0.1 % of a nonionic surfactant, sorbitan monostearate (20). See instant claims 23, 30, 31. Adding fatty alcohols such as stearyl alcohol or cetyl alcohol up to 5 % by weight is taught in col. 9, lines 1 – 6. See instant claims 23 e). The reference teaches adding the Carbopol polymers “effectively makes it possible, in particular, to obtain a physically and cosmetically pleasant product, especially one which is smooth and of satisfactory application, with a viscosity which may range from fluid milk to cream”. See col. 9, lines

35 – 44. Based on this teaching, the skilled artisan would have expected that topical application of Example 5, which contains Carbopol 980 in combination of the Pemulen TR2 in the claimed amount, would be pleasant to the skin.

Since the reference teaches that the polymer is used to vary the viscosity of the composition, adjusting the weight amount of the polymer by routine experimentation to discover the optimum weight amount for a desired viscosity of the formulation would have been obvious to a skilled artisan. See instant claims 23, 26-29, 47(e). The reference also teaches adding “one or more” additional thickeners such as xanthan gum, celluloses, and polyacrylamide-based polymers up to 6 % by weight. See col. 9, lines 7 – 35; instant claims 38. Cosmetic auxiliaries are taught in col. 10, lines 38 – 52. See instant claims 41, 42. The reference also teaches that the compositions are applied in make-up compositions such as foundation by adding pigments. See col. 9, line 58 – col. 10, line 68. See instant claims 49. Also taught is using fillers to control the matte effect to the make up, which indicates that the composition is also intended for oily skin. See col. 9, lines 9, lines 51 – 57; instant claim 48.

While Favre generally teaches that surfactants are used to further “refine the emulsion obtained”, the reference fails to mention the surfactants of the instant claims 23.

Cosmetic Additives teaches that triceteareth-4 phosphate is an oil-in-water emulsifiers that aids fast absorption of the composition into skin. See p. 354, Hostaphat KW 340 N and Hostacerin CG.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the oil-in-water emulsion of Favre by incorporating triceteareth-4 phosphate, as motivated by Cosmetic Additives, because the latter teaches that the oil-in-water emulsifier aids fast absorption of the composition into skin. The skilled artisan would have had a reasonable expectation of successfully producing an oil-in-water emulsion cosmetic which is rapidly absorbed to the skin.

**Claims 32, 33, 43-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Favre and Cosmetic Additives as applied to claims 23-31, 35-42, 47-49 as above, and further in view of Cosmetic and Toiletry Formulations (1996, 2<sup>nd</sup> ed., Vol. 5).**

The combined references fail to teach the amount by which triceteareth-4 phosphate is used.

Cosmetic and Toiletry Formulations teaches that 1 % of triceteareth-4 phosphate is used in an oil-in-water skin milk formulation comprising 0.15 % of Carbopol 980.

It would have been obvious to the skilled artisan to formulate the composition of the combined references by using triceteareth-4 phosphate according to the teaching of Cosmetic and Toiletry Formulations, because a) Favre teaches that Carbopols are used to make fluid milk formulations and b) Cosmetic Toiletry Formulations teaches a specific example of skin milk oil-in-water emulsion which employs the same polyacrylic acid thickener used in Favre, and the specific amount of triceteareth-4 phosphate to be used. The skilled artisan would have had a reasonable expectation of successfully producing a stable skin milk emulsion which is rapidly absorbed to the skin.

**Claims 23-34, 36-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Favre et al. (US 6395262 B1) in view of Muller (US 62488338),**

Favre is replied upon as discussed above. The reference fails to teach glyceryl stearate citrate.

Muller teaches starchy cleaning and cosmetic care compositions in the form of O/W emulsions. The reference teaches to "maintain the hydrophobic phase as fine dispersion" by adding co-emulsifiers such as a combination of glycerin monostearate or distearate with glycerine mono- or difatty acid esters in the amount of 0.1-10, more preferably 0.5-5 wt %. See col. 7, lines 47-66. Specific example formulations comprising 3 % of Axol C 62 (glyceryl stearate citrate) is shown in Examples 10-15.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to add a co-emulsifier such as glyceryl stearate citrate as motivated by Muller because the latter teaches that the co-emulsifier is added in order to stabilize the fine dispersion of the hydrophobic phase in the emulsion. The skilled artisan would have had a reasonable expectation of successfully stabilizing the emulsions of Favre.

### ***Response to Arguments***

Applicant's arguments filed on September 25, 2007 have been fully considered but they are moot in view of the claim cancellation in part and not persuasive in part.

Applicants' arguments regarding the claim rejections made under 35 U.S.C. § 112, first and second paragraphs, are moot in view of the claim cancellation.

Applicants assert that Favre teaches away from adding an anionic surfactant because the reference teaches “exclusively” using nonionic surfactants. However, the reference does not in any way teach away from addition of a co-emulsifier, nor does it indicate that combining ionic and nonionic surfactants would be detrimental to the stability of an emulsion. Furthermore, the rejection cites as the motivation to use tricestearate-4 phosphate in this particular case is that the emulsifier is known as an absorption enhancer, and not as a replacement for the nonionic surfactant that are already used in the Favre invention.

Applicants also assert that the skin milk of Cosmetic Toiletry Formulation and the particular example formulation of Favre are not similar due to the content of silicone-based oil. However, the use of tricestearate-4-phosphate as an absorption enhancer in a cosmetic composition, whether silicone-based or not, would have been obvious to a skilled artisan. Similarly, the content amount of the thickening agents or other surfactants in the secondary reference would also not have affected the motivation to use the emulsifier as an absorption enhancer.

With respect to the weight amount of the copolymer thickeners, applicants assert that “irrespective of the desired viscosity of the composition, the total amount of Pemulen TR2 and Carbopol 980 in the compositions of FAVRE should be at least 0.6 % by weight”. Examiner respectfully disagrees, as the reference teaches in col. 5, lines 1-5 the preferred weight range of the prior art invention, which is within the claimed limitation.

### ***Conclusion***

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gina C. Yu  
Patent Examiner

Rodmansplan